

EXHIBIT S

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

ZIEBART INTERNATIONAL CORPORATION,

a Michigan corporation,

Plaintiff/Counterclaim Defendant,

-vs-

Case No. 2:15-cv-11745-JEL-APP

Hon. Judith E. Levy

Z TECHNOLOGIES CORPORATION,

a Michigan corporation,

Defendant/Counterclaim Plaintiff,

and

PURE ASPHALT COMPANY,

Counterclaim Defendant.

DEPONENT: Patricia Lipsky

DATE: Wednesday, May 25, 2016

TIME: 1:00 p.m.

LOCATION: 1000 Town Center

22nd Floor

Southfield, Michigan

REPORTER: Quentina Rochelle Snowden,

Certified Shorthand Reporter-5519

and Notary Public

JOB NO: 2807

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ZIEBART INTERNATIONAL -vs- Z TECHNOLOGIES
Patricia LibskyJob 2807
Pages 2..5

<p>1 APPEARANCES:</p> <p>2 BROOKS KUSHMAN, PC</p> <p>3 By: Mr. Robert Bradenburg</p> <p>4 1000 Town Center</p> <p>5 22nd Floor</p> <p>6 Southfield, Michigan 48075</p> <p>7 248-358-4400</p> <p>8 Rbrandenburg@brookskushman.com</p> <p>9 Appearing on behalf of the Plaintiff/</p> <p>10 Counterclaim Defendant.</p> <p>11</p> <p>12 JABE LAW FIRM, LLC</p> <p>13 By: Mr. Daniel N. Jabe</p> <p>14 470 Olde Worthington Road</p> <p>15 Suite 200</p> <p>16 Westerville, Ohio 43082</p> <p>17 614-354-4133</p> <p>18 Djabe@jabelawfirm.com</p> <p>19 Appearing on behalf of the Defendant/</p> <p>20 Counterclaim Plaintiff.</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 APPEARANCES CONTINUED:</p> <p>2 LEWIS, BRISOIS, BISGAARD & SMITH, LLP</p> <p>3 By: Mr. Darrick J. Hooker</p> <p>4 550 West Adams Street</p> <p>5 Suite 300</p> <p>6 Chicago, Illinois 60661</p> <p>7 312-463-3408</p> <p>8 Darrick.hooker@lewisbrisbois.com</p> <p>9 Appearing on behalf of the Counterclaim</p> <p>10 Defendant, Pure Asphalt Company</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>1 INDEX PAGE</p> <p>2 WITNESS: PAGE</p> <p>3 Patricia Lipsky</p> <p>4 Examination by Mr. Jabe 05</p> <p>5 (No further examination.)</p> <p>6</p> <p>7 EXHIBITS</p> <p>8 EXHIBIT DESCRIPTION MARKED</p> <p>9 EXHIBIT 13 CORRESPONDENCE DATED 34</p> <p>10 5-19-11</p> <p>11 EXHIBIT 14 CORRESPONDENCE DATED 42</p> <p>12 7-7-11</p> <p>13 EXHIBIT 15 SETTLEMENT AGREEMENT 43</p> <p>14</p> <p>15 (Exhibits attached.)</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 Wednesday, May 25, 2016</p> <p>2 Southfield, Michigan</p> <p>3 1:00 p.m.</p> <p>4 PATRICIA LIPSKY,</p> <p>5 was thereupon called as a witness herein, and</p> <p>6 after having first been duly sworn to testify to</p> <p>7 the truth, the whole truth and nothing but the</p> <p>8 truth was examined and testified as follows:</p> <p>9 EXAMINATION</p> <p>10 BY MR. JABE:</p> <p>11 Q Please state your name for the record.</p> <p>12 A Patricia Lipsky.</p> <p>13 Q And how do you spell your last name?</p> <p>14 A L-I-P-S-K-Y.</p> <p>15 Q Have you had your deposition taken before?</p> <p>16 A No.</p> <p>17 Q So, the Court Reporter here is going to be recording</p> <p>18 everything that you say and it's important, as a</p> <p>19 result of that, to speak clearly, and to give verbal</p> <p>20 answers to the questions, because she can't pick up</p> <p>21 on, or record, a nod or something like that.</p> <p>22 Do you understand?</p> <p>23 A Yes.</p> <p>24 Q If you have any questions about -- or let me say</p> <p>25 this: If any of my questions are unclear, please</p>

ZIEBART INTERNATIONAL -vs- Z TECHNOLOGIES
Patricia Libsky

Job 2807
Pages 6..9

<p style="text-align: right;">Page 6</p> <p>1 don't hesitate to tell me that and ask me to</p> <p>2 rephrase. I'm happy to do that if you don't</p> <p>3 understand a question I'm asking.</p> <p>4 Is that okay?</p> <p>5 A Okay.</p> <p>6 Q Do you hold any academic degrees?</p> <p>7 A I have my paralegal certificate, and legal -- it's</p> <p>8 actually called a legal assistant certificate and</p> <p>9 legal assistant specialist in litigation.</p> <p>10 Q And where did you obtain that?</p> <p>11 A Oakland University.</p> <p>12 Q And when?</p> <p>13 A 1998.</p> <p>14 Q Can you tell me the positions that you've held at</p> <p>15 Ziebart and the approximate dates that you've held</p> <p>16 those positions?</p> <p>17 A License and trademark manager is my title, and I've</p> <p>18 held that same title and position since 2007.</p> <p>19 Q Is that the only position you've held at Ziebart?</p> <p>20 A Yes.</p> <p>21 Q Where did you work before you came to Ziebart?</p> <p>22 A Wolpoff and Abramson Law Offices, and before that,</p> <p>23 Federated Capital Corporation.</p> <p>24 Q Did you do trademark-related work at either of those</p> <p>25 places?</p>	<p style="text-align: right;">Page 7</p> <p>1 A No.</p> <p>2 Q What does your current position at Ziebart entail?</p> <p>3 A Any legal matter comes to me, and I work with our</p> <p>4 outside attorneys. I handle franchise issues,</p> <p>5 registering our franchise disclosure document with</p> <p>6 the various registration states. And I work with --</p> <p>7 if somebody wants to file a trademark, I work with</p> <p>8 our outside attorneys to file a trademark.</p> <p>9 Q You said at the beginning of your answer that a</p> <p>10 legal matter comes to you. How does that happen?</p> <p>11 Or what did you mean by that?</p> <p>12 A Any kind of issue that anybody in the building</p> <p>13 doesn't understand, that they think I can help them</p> <p>14 with, be it trademark, copyright, litigation, any --</p> <p>15 anything that would fall under the legal purview, I</p> <p>16 guess I would say.</p> <p>17 Q Have you taken any courses relating to trademark</p> <p>18 issues?</p> <p>19 A I've taken one course at the Trademark Office. I</p> <p>20 went for -- I guess you would call it a seminar. It</p> <p>21 was just an overview of trademark law.</p> <p>22 Q Do you have a department within Ziebart that you</p> <p>23 work as part of?</p> <p>24 A I'm just the -- I'm the only person who -- in the</p> <p>25 Legal Department. I'm it.</p>
<p style="text-align: right;">Page 8</p> <p>1 Q Does Ziebart take steps to protect its trademarks?</p> <p>2 A Yes.</p> <p>3 Q What does Ziebart do?</p> <p>4 A We work with our attorneys who monitor if there's</p> <p>5 a -- if there's any kind of -- if they -- they -- if</p> <p>6 they see anything. I don't know. They have like a</p> <p>7 watch service that watches trademarks, you know, if</p> <p>8 somebody files a trademark, they let me know. And</p> <p>9 they watch it.</p> <p>10 Q Does Ziebart conduct any investigations to determine</p> <p>11 if someone is using its trademarks?</p> <p>12 A I'm not sure what you mean by "investigation." You</p> <p>13 mean --</p> <p>14 Q Do you do any monitoring of the use of names by</p> <p>15 other companies other than the monitoring you</p> <p>16 mentioned that counsel does?</p> <p>17 A People -- if somebody sees something -- people --</p> <p>18 you know everyone in the building is aware we have a</p> <p>19 name and we have trademarks and if anyone sees</p> <p>20 anything they bring it to my attention or Tom</p> <p>21 Wolfe's attention.</p> <p>22 So I guess we're all kind monitoring</p> <p>23 it in that way, we're very aware and if somebody</p> <p>24 doesn't know if we have a trademark, they'll come to</p> <p>25 me and say "Do we have a trademark? Somebody is</p>	<p style="text-align: right;">Page 9</p> <p>1 using our trademark."</p> <p>2 Q Once someone identifies a possible trademark</p> <p>3 infringement, what do you do next?</p> <p>4 A I call our attorneys.</p> <p>5 Q Does Ziebart itself conduct any inquiries as a</p> <p>6 result of that information that may have been</p> <p>7 received by the possible trademark usage?</p> <p>8 A Inquiries to?</p> <p>9 Q For example, does Ziebart make phone calls itself to</p> <p>10 determine whether somebody is in fact using a</p> <p>11 trademark, or visit a location to make that</p> <p>12 determination?</p> <p>13 A Yes.</p> <p>14 Q And who would do that?</p> <p>15 A Usually me. Someone will bring that to my</p> <p>16 attention.</p> <p>17 Q And you might make a phone call to the potential</p> <p>18 infringer --</p> <p>19 A Yes.</p> <p>20 Q -- to make a determination?</p> <p>21 A Yes.</p> <p>22 Q To visit the potential infringer's location to see</p> <p>23 what they're doing?</p> <p>24 A I don't visit if we see something. Sometimes I'll</p> <p>25 call -- sometimes all you have to do is call and</p>

ZIEBART INTERNATIONAL -vs- Z TECHNOLOGIES
Patricia Libsky

Job 2807
Pages 10..13

<p style="text-align: right;">Page 10</p> <p>1 I'll call the person infringing and say "Do you know 2 that you're using our mark?" And they'll say, "No, 3 we weren't aware of it." I'll say, "Well, you are. 4 Can you remove it?" They say "Yes." And that's the 5 end of it. Or I'll send a letter. 6 Q Do you ever make calls without revealing your 7 identity? 8 A No. 9 Q Do you ever have anyone else make those inquiries, 10 counsel or third parties? 11 A Yes. 12 Q Would it include both counsel and third parties? 13 A Just counsel. 14 Q Do you always send a cease and desist letter if you 15 believe someone is infringing one of Ziebart's 16 trademarks? 17 A No. 18 Q Why would you send one sometimes and not others? 19 MR. BRADENBURG: Hold on. If you can 20 answer that without referring to any communications 21 you have with your attorneys, you may answer that. 22 In other words, if your attorneys tell you to do it 23 or not to do it, that's not something he can 24 discover. But if you make the decision yourself, or 25 in consultation with non-attorneys, then you can</p>	<p style="text-align: right;">Page 11</p> <p>1 answer. 2 Do you understand the distinction? 3 THE WITNESS: I believe so. 4 BY MR. JABE: 5 Q Let me try to ask the question differently. 6 A Okay. 7 Q Setting aside any advice you might receive from the 8 attorneys that you're engaging, what types of 9 considerations do you have in mind when you're 10 making a decision about whether to send a cease and 11 desist letter? 12 A I always have cost in my mind, and for a period of 13 time I decided I would be the person to send them 14 and I found that it was very ineffective and that -- 15 so I -- if a cease and desist letter is going to be 16 sent, I'm almost always consulting an attorney. If 17 it's something like if somebody sees something on 18 the Internet and they say, "You know, our picture is 19 on the Internet", you know, "Can you do something 20 about it?" Then I make a judgment call if it's 21 something that I think I can easily handle and just 22 make a phone call to the person and say "Do you know 23 you have our name on the Internet or our picture on 24 the Internet?" And a lot of times it's very 25 innocent, they don't know they do. They'll be</p>
<p style="text-align: right;">Page 12</p> <p>1 cooperative and say "Yes." Then I'll make a 2 judgment call if I think I can do it myself, I'll do 3 it. But for cease and desist letters now I almost 4 always send it or I do always send it to an 5 attorney. 6 Q Do you ever identify infringements and determine 7 that it's not worth sending a cease and desist 8 letter? 9 A Yes. 10 Q Since you began working at Ziebart, how many cease 11 and desist letters has Ziebart or its counsel sent 12 claiming trademark infringement? 13 A I don't know. 14 Q Can you provide a rough estimate? 15 A I don't know. I'm sorry. I -- I -- a lot. I don't 16 know. I mean, I couldn't say for sure. 17 Q Would it be more than 50 since 2007? 18 A I wouldn't say more than 50. 19 Q About 50? 20 A No. Maybe 30. 21 Q In the past year, can you tell me roughly how many 22 cease and desist letters have you sent claiming 23 trademark infringement or its counsel has sent on 24 Ziebart's behalf? 25 A Maybe four.</p>	<p style="text-align: right;">Page 13</p> <p>1 Q You testified earlier that Ziebart will sometimes 2 identify trademark infringement but not send a cease 3 and desist letter; is that correct? 4 A I don't know if -- I don't know if -- I don't know 5 if you call it trademark infringement. We have seen 6 pictures that we have shot videos of that somehow 7 get on the Internet, I don't know that they're 8 necessarily trademark infringement. 9 Q Would it be fair to say you've seen things that you 10 would identify as possibly trademark infringement? 11 A Yes. 12 Q And then decide not to send cease and desist 13 letters? 14 A Yes. 15 Q Are there circumstances where you send cease and 16 desist letters and the person that you send it to 17 complies with your requests? 18 A Yes. 19 Q Are there also circumstances where they do not? 20 A Yes. 21 Q When they do not, do you always file a lawsuit? 22 A No. 23 Q Other than the advice of counsel, what would be some 24 considerations that Ziebart would have in deciding 25 whether to file a lawsuit under those circumstances?</p>

ZIEBART INTERNATIONAL -vs- Z TECHNOLOGIES
Patricia Libsky

Job 2807
Pages 14..17

<p style="text-align: right;">Page 14</p> <p>1 A Could you repeat the question again?</p> <p>2 Q Other than advice from counsel --</p> <p>3 MR. JABE: Actually could you read</p> <p>4 that back.</p> <p>5 (The indicated portion of the record</p> <p>6 was read back as follows:</p> <p>7 "Q Other than the advice of counsel,</p> <p>8 what would be some considerations that Ziebart would</p> <p>9 have in deciding whether to file a lawsuit under</p> <p>10 those circumstances?")</p> <p>11 BY MR. JABE:</p> <p>12 Q The circumstances were when the person who received</p> <p>13 the cease and desist letters did not comply, why</p> <p>14 would you decide not to file a lawsuit against</p> <p>15 someone like that, other than --</p> <p>16 A I don't know that I can say. It's not my decision.</p> <p>17 Q Whose decision is that?</p> <p>18 A It would be probably between Tom Wolfe and our</p> <p>19 attorney.</p> <p>20 Q Since you began working at Ziebart, how many</p> <p>21 lawsuits has Ziebart filed claiming trademark</p> <p>22 infringement?</p> <p>23 A I don't know.</p> <p>24 Q Can you give a rough estimate?</p> <p>25 A Maybe five.</p>	<p style="text-align: right;">Page 15</p> <p>1 Q How many lawsuits in the last year?</p> <p>2 A Two or three.</p> <p>3 Q But you think it might only be five since 2007?</p> <p>4 A Did you say lawsuits that we filed or that we were</p> <p>5 involved in or --</p> <p>6 Q That you filed. That Ziebart filed.</p> <p>7 A I don't know an exact amount because not all of them</p> <p>8 come directly from us. Some of them go to -- some</p> <p>9 of them go to our Collection Department who in turn</p> <p>10 they -- the collection agency hires attorneys to sue</p> <p>11 on our behalf, so I don't -- I don't know that I --</p> <p>12 I would know everybody.</p> <p>13 Q I'm only talking about trademark infringement suits,</p> <p>14 not collection suits.</p> <p>15 MR. BRADENBURG: I object to your</p> <p>16 question. It's assuming there's a difference</p> <p>17 between trademark infringement and --</p> <p>18 MR. JABE: I do assume there is a</p> <p>19 difference. If there isn't one --</p> <p>20 BY MR. JABE:</p> <p>21 Q What is a collection suit that Ziebart might</p> <p>22 initiate?</p> <p>23 A If someone has outstanding royalties, if they're</p> <p>24 terminated or if they voluntarily discontinue being</p> <p>25 a Ziebart franchisee, and they owe us money, usually</p>
<p style="text-align: right;">Page 16</p> <p>1 a lot of times it's both trademark and collection.</p> <p>2 They'll owe us money and they'll still have their</p> <p>3 Ziebart sign still on. So a lot of times -- a lot</p> <p>4 of times it will be both.</p> <p>5 So, I mean, I don't know that I know</p> <p>6 an exact amount, but I -- since I've been there, at</p> <p>7 least 5, maybe more.</p> <p>8 MR. JABE: Okay. Can we go off the</p> <p>9 record for a minute.</p> <p>10 (Off the record at 1:21 p.m.)</p> <p>11 (Back on the record at 1:21 p.m.)</p> <p>12 BY MR. JABE:</p> <p>13 Q What investigations has Ziebart done since you began</p> <p>14 working, to determine if Z Tech is using its</p> <p>15 trademarks?</p> <p>16 Let me first ask you, are you familiar</p> <p>17 with Z Technologies Corporation?</p> <p>18 A Yes.</p> <p>19 Q And that's my client, you understand?</p> <p>20 A Yes.</p> <p>21 Q So the question is: What investigation has Ziebart</p> <p>22 done since you began working there to determine if Z</p> <p>23 Tech is using its trademarks?</p> <p>24 A When you say "Z Tech" you mean Z Technologies?</p> <p>25 Q Yes.</p>	<p style="text-align: right;">Page 17</p> <p>1 A Because there are other Z Techs --</p> <p>2 Q My client, Z Technologies.</p> <p>3 MR. BRADENBURG: All of this is to the</p> <p>4 extent it involves communications with attorneys, he</p> <p>5 is not entitled to know what those discussions are,</p> <p>6 what you did as a result of instructions from your</p> <p>7 attorneys.</p> <p>8 But to the extent you did it</p> <p>9 independent of the attorneys, you can answer those</p> <p>10 questions.</p> <p>11 Do you understand the distinction</p> <p>12 there?</p> <p>13 THE WITNESS: Yes.</p> <p>14 MR. JABE: Are you instructing her not</p> <p>15 to answer and disclose any investigations that</p> <p>16 involved attorneys?</p> <p>17 MR. BRADENBURG: If she undertook any</p> <p>18 investigation at the direction of an attorney,</p> <p>19 that's work product and is not discoverable, at</p> <p>20 least not the details of it. If you ask "Have you</p> <p>21 done investigations", but now you're asking what</p> <p>22 type of investigations, which is your next step.</p> <p>23 BY MR. JABE:</p> <p>24 Q Have you done any investigations since you began</p> <p>25 working at Ziebart, to determine whether Z</p>

ZIEBART INTERNATIONAL -vs- Z TECHNOLOGIES
Patricia Libsky

Job 2807
Pages 18..21

<p style="text-align: right;">Page 18</p> <p>1 Technologies is violating Ziebart's trademarks?</p> <p>2 A Yes.</p> <p>3 Q When was the first time that you learned that Z Tech</p> <p>4 might be using one of Ziebart's trademarks?</p> <p>5 MR. BRADENBURG: Again, you can answer</p> <p>6 that -- well, this is -- you can answer when.</p> <p>7 THE WITNESS: 2011.</p> <p>8 BY MR. JABE:</p> <p>9 Q And what was the trademark at issue?</p> <p>10 A There were, as I recall, three, the Ziebart name, Z</p> <p>11 Guard and Z Shield.</p> <p>12 Q Prior to 2011, did you have any information</p> <p>13 suggesting that Z Tech was violating any of</p> <p>14 Ziebart's trademarks?</p> <p>15 A I didn't personally. I don't know if anyone else</p> <p>16 did.</p> <p>17 Q After learning the information you described about</p> <p>18 the three names -- and what were those names again?</p> <p>19 A Ziebart, Z Guard and Z Shield.</p> <p>20 Q Can you spell those?</p> <p>21 A The way they spelled it -- the way Z Technologies</p> <p>22 spelled it was Z, space, Guard. I can't remember if</p> <p>23 they -- if they -- I think they spelled it</p> <p>24 G-U-A-R-D. I know it was spelled differently than</p> <p>25 ours, but we had a trademark called Z-GARD also and</p>	<p style="text-align: right;">Page 19</p> <p>1 I don't recall how they spelled Z Shield, how they</p> <p>2 did it exactly, but it was different than ours.</p> <p>3 Q What did Ziebart do after learning this information?</p> <p>4 A I believe I sent a cease and desist letter. I</p> <p>5 believe that -- that I did.</p> <p>6 Q Was this something that you determined yourself from</p> <p>7 Google searches?</p> <p>8 A No.</p> <p>9 Q Did somebody else in the company determine that?</p> <p>10 A Yes.</p> <p>11 Q Who was that?</p> <p>12 A I believe it was our former employee, Mike Pino.</p> <p>13 Q Former employee contacted Ziebart --</p> <p>14 A He was employed at the time. He's a former employee</p> <p>15 now. At the time he was employed and I believe he</p> <p>16 was the one who brought it to my attention.</p> <p>17 Q So he saw Ziebart's -- sorry, he saw Z Tech's</p> <p>18 website and brought to it your attention?</p> <p>19 A Yes.</p> <p>20 Q What was Mike Pino's job responsibilities at the</p> <p>21 time?</p> <p>22 A I believe he was senior vice president.</p> <p>23 Q Was he senior vice president over any particular</p> <p>24 subject matter?</p> <p>25 A No. I believe he was senior vice president of the</p>
<p style="text-align: right;">Page 20</p> <p>1 corporation -- of Ziebart International. But I</p> <p>2 think he primarily was selling franchise salesman.</p> <p>3 Q Okay. Can you recall any other instances where you</p> <p>4 learned that Z Tech might be using one of Ziebart's</p> <p>5 trademarks?</p> <p>6 A Yes.</p> <p>7 Q And what other instances can you recall?</p> <p>8 A Formula Q.</p> <p>9 Q And when did you learn that?</p> <p>10 A 2014.</p> <p>11 Q And what did you learn about Z Tech's use of the</p> <p>12 name Formula Q?</p> <p>13 A That there were some stickers with the name on it at</p> <p>14 a facility in Indiana.</p> <p>15 Q And did you discover that personally?</p> <p>16 A No.</p> <p>17 Q Did someone else at Ziebart discover that?</p> <p>18 A Yes.</p> <p>19 Q And who was that?</p> <p>20 A I believe it was Thomas Wolfe Jr. Someone had</p> <p>21 brought it to his attention.</p> <p>22 Q Do you know who that was?</p> <p>23 A I believe it was somebody from Pure Asphalt.</p> <p>24 Q Do you know where in Indiana?</p> <p>25 A No.</p>	<p style="text-align: right;">Page 21</p> <p>1 Q Do you know the business in Indiana or what the</p> <p>2 circumstances were?</p> <p>3 A I don't recall.</p> <p>4 Q Was this a Ziebart customer?</p> <p>5 A I don't know.</p> <p>6 Q And to make sure that I understand, what's your</p> <p>7 understanding of what the use of the name Formula Q</p> <p>8 was that you learned about at that time in 2014?</p> <p>9 What was happening with the name that you learned?</p> <p>10 A That they had the name on a -- there was a sticker</p> <p>11 on a -- I can't remember if it was a barrel or if it</p> <p>12 was some -- it was on something, there were two or</p> <p>13 three of them at a -- at a place in Indiana. That's</p> <p>14 all I know.</p> <p>15 Q Had you ever heard about Z Tech using the name</p> <p>16 "Formula Q" before then?</p> <p>17 A I hadn't personally.</p> <p>18 Q You hadn't personally heard?</p> <p>19 A I don't know if anybody else did, but I hadn't</p> <p>20 myself.</p> <p>21 Q Sure. Nobody said anything to you about it prior to</p> <p>22 them?</p> <p>23 A Right.</p> <p>24 Q So you had no awareness that they were using the</p> <p>25 name?</p>

ZIEBART INTERNATIONAL -vs- Z TECHNOLOGIES
Patricia Libsky

Job 2807
Pages 22..25

<p style="text-align: right;">Page 22</p> <p>1 A Right.</p> <p>2 Q Can you recall any other instances where you learned</p> <p>3 that Z Tech might be using one of Ziebart's</p> <p>4 trademarks?</p> <p>5 A No.</p> <p>6 Q Did you ever have any discussions with anyone at</p> <p>7 Ziebart about Z Tech using any of Ziebart's</p> <p>8 trademarks prior to the time you began working</p> <p>9 there? And what I mean by that is, not before you</p> <p>10 started working there did you have discussions, but</p> <p>11 after you started working there, did you have any</p> <p>12 discussions about the use of trademarks by Z Tech</p> <p>13 before you had started?</p> <p>14 MR. BRADENBURG: Let me interject</p> <p>15 here. She is part of the litigation team, so</p> <p>16 obviously throughout the litigation that has been</p> <p>17 discussed. And are you trying to confirm that</p> <p>18 she -- you know, that that's been discussed</p> <p>19 repeatedly during the litigation?</p> <p>20 MR. JABE: No.</p> <p>21 MR. BRADENBURG: Okay. So, can you</p> <p>22 limit it to some time frame before they talked to</p> <p>23 attorneys or -- I don't know how you want to phrase</p> <p>24 it.</p> <p>25 BY MR. JABE:</p>	<p style="text-align: right;">Page 23</p> <p>1 Q Outside of the context of this dispute, when you</p> <p>2 were working at Ziebart, did you have any</p> <p>3 discussions with people about Z Tech using Ziebart's</p> <p>4 trademarks in the past, other than the instances we</p> <p>5 just discussed?</p> <p>6 A I -- I didn't -- I don't think so. I -- I knew that</p> <p>7 we had been in a dispute with some -- some Z Tech</p> <p>8 people and that was -- they were dealers. So if</p> <p>9 they did, that's who I thought they were talking</p> <p>10 about. I didn't know anything about Z Technologies</p> <p>11 itself.</p> <p>12 Q So you didn't know there had been a prior to lawsuit</p> <p>13 between Ziebart and Z Technologies?</p> <p>14 A They might have told me, but I didn't -- I didn't</p> <p>15 understand what -- that it was this company. I</p> <p>16 thought it was the Z Tech dealers. So they might</p> <p>17 have mentioned it, but I didn't -- I didn't -- I</p> <p>18 didn't know until 2011 who they were, who your</p> <p>19 client was.</p> <p>20 Q Did you know that at the time of the 2011 issues we</p> <p>21 discussed, that Z Technologies was formed from a</p> <p>22 part of Ziebart?</p> <p>23 A No. I might have been told that, but I didn't</p> <p>24 understand it. I didn't understand it. I still</p> <p>25 thought it was the Z Tech dealers.</p>
<p style="text-align: right;">Page 24</p> <p>1 Q What about by the time you got to the 2014 issue</p> <p>2 with respect to Formula Q you just mentioned, did</p> <p>3 you have that understanding then?</p> <p>4 A Yeah, then I understood it.</p> <p>5 Q Did you know that they had acquired the product</p> <p>6 Formula Q from Ziebart?</p> <p>7 MR. BRADENBURG: Objection. Are you</p> <p>8 asking hearsay? If she -- she wasn't around in 2019</p> <p>9 (sic) so are you asking for hearsay? That's what</p> <p>10 I'm asking. Because I'll object to hearsay.</p> <p>11 MR. JABE: This is a speaking</p> <p>12 objection, and I don't even fully understand it.</p> <p>13 BY MR. JABE:</p> <p>14 Q But, my question is: In 2014, when you learned that</p> <p>15 Z Tech was using the name "Formula Q", did you have</p> <p>16 any understanding that Z Tech had purchased the</p> <p>17 formula for Formula Q from Ziebart's Products Group</p> <p>18 in the 1990s?</p> <p>19 A When it was initially brought to me, no. As --</p> <p>20 MR. BRADENBURG: Well, objection. If</p> <p>21 you're going past the initial time, you have -- I</p> <p>22 would object to the extent you're talking about any</p> <p>23 attorney/client privileges. Answer -- well, you can</p> <p>24 answer his question.</p> <p>25 Do you want to ask after the initial</p>	<p style="text-align: right;">Page 25</p> <p>1 period, which I think is what she's leaning towards?</p> <p>2 BY MR. JABE:</p> <p>3 Q Without revealing any attorney/client</p> <p>4 communications, you eventually came to learn that Z</p> <p>5 Tech acquired the product formula --</p> <p>6 MR. BRADENBURG: Objection.</p> <p>7 BY MR. JABE:</p> <p>8 Q -- is that right?</p> <p>9 MR. BRADENBURG: There's no testimony</p> <p>10 to that effect. Lacks personal knowledge.</p> <p>11 MR. JABE: I'm sorry, Bob, every</p> <p>12 objection you're making is a speaking objection. I</p> <p>13 don't mind cutting you some latitude with respect to</p> <p>14 that from time to time, but these are not</p> <p>15 appropriate objections. You can object to form, and</p> <p>16 if I have a question about what that objection is,</p> <p>17 I'll ask.</p> <p>18 But I would appreciate it if you would</p> <p>19 refrain from objecting and speaking at length about</p> <p>20 the issues and coaching the witness about the</p> <p>21 answers.</p> <p>22 I respect the privilege issues, and</p> <p>23 I'm trying very hard to avoid them, and I have no</p> <p>24 issues with the objections on that front. But with</p> <p>25 respect to the other issues, I would appreciate it</p>

ZIEBART INTERNATIONAL -vs- Z TECHNOLOGIES
Patricia Libsky

Job 2807
Pages 26..29

<p style="text-align: right;">Page 26</p> <p>1 if you would keep them shorter.</p> <p>2 MR. HOOKER: He can object to the form</p> <p>3 of the question like you said, but I don't think</p> <p>4 that his speaking objections are coaching the</p> <p>5 witness. I think that he's making sure the witness</p> <p>6 is cautious or not invading or violating the</p> <p>7 attorney/client and work product privilege doctrine</p> <p>8 to privilege --</p> <p>9 MR. BRADENBURG: Mr. Jabe, maybe it's</p> <p>10 because I have knowledge you don't have, but I know</p> <p>11 that the attorneys were involved in this case almost</p> <p>12 immediately. And you can confirm that with her.</p> <p>13 So every time you're asking anything</p> <p>14 beyond that initial moment, I'm getting very</p> <p>15 uncomfortable.</p> <p>16 MR. JABE: I understand that.</p> <p>17 MR. BRADENBURG: So, you know, if you</p> <p>18 want to confirm that the attorneys were involved</p> <p>19 almost immediately afterwards, then you'll have a</p> <p>20 better context for, you know, why I'm, as you say,</p> <p>21 uncomfortable, and, you know, on edge here.</p> <p>22 MR. JABE: I appreciate the privilege</p> <p>23 issues. I really do. I have no problem whatsoever</p> <p>24 with that. I thought that some of the objections</p> <p>25 were about other topics that you were talking about</p>	<p style="text-align: right;">Page 27</p> <p>1 some other things in addition to privilege. That's</p> <p>2 the part I'm talking about. Let's just continue</p> <p>3 and, you know, we -- I will continue to try to be</p> <p>4 mindful of privilege issues, and you should feel</p> <p>5 free to object with respect to those, and help me</p> <p>6 avoid asking questions that will reveal privilege</p> <p>7 information.</p> <p>8 MR. HOOKER: I was just going to say,</p> <p>9 to the extent that no attorneys were involved, maybe</p> <p>10 preface the questions like that.</p> <p>11 MR. JABE: Sure. Sure.</p> <p>12 BY MR. JABE:</p> <p>13 Q Let me ask you a question on a different topic.</p> <p>14 Well, you became aware that Z Tech was</p> <p>15 using the name Formula Q in 2014 because somebody</p> <p>16 reported to you that they saw drums with a label on</p> <p>17 it in Indiana?</p> <p>18 A Yes.</p> <p>19 Q Do you recall what month of the year that was?</p> <p>20 A July.</p> <p>21 Q Did anyone inform Z Technologies about that at the</p> <p>22 time?</p> <p>23 MR. BRADENBURG: Again, to the extent</p> <p>24 you can answer without referring to communications</p> <p>25 with counsel, you may do so.</p>
<p style="text-align: right;">Page 28</p> <p>1 BY MR. JABE:</p> <p>2 Q Did you notify anyone at Z Tech about that at the</p> <p>3 time?</p> <p>4 A No.</p> <p>5 Q Did you instruct anyone to notify Z Tech about that?</p> <p>6 MR. BRADENBURG: To the extent you can</p> <p>7 answer that question without referring to</p> <p>8 communications with counsel, you may do so.</p> <p>9 THE WITNESS: I don't think I can</p> <p>10 answer it without what I talked about with our</p> <p>11 attorney.</p> <p>12 BY MR. JABE:</p> <p>13 Q Okay. When did someone from Ziebart notify Z Tech</p> <p>14 that it was using the name Formula Q, allegedly in</p> <p>15 violation of Ziebart's trademarks?</p> <p>16 MR. BRADENBURG: If you can answer</p> <p>17 that question without reference to communications</p> <p>18 with counsel, you may do so. Otherwise I'm going to</p> <p>19 instruct you not to answer.</p> <p>20 THE WITNESS: I can't answer that</p> <p>21 without talking about with the attorney.</p> <p>22 BY MR. JABE:</p> <p>23 Q You can't tell me when Ziebart told Z Tech that it</p> <p>24 was violating its trademarks?</p> <p>25 A We didn't contact Z Tech. Our attorneys did.</p>	<p style="text-align: right;">Page 29</p> <p>1 Q Do you know when that happened?</p> <p>2 MR. BRADENBURG: If you can answer</p> <p>3 that without communications with counsel, you may do</p> <p>4 so. Otherwise I'd instruct you not to answer.</p> <p>5 THE WITNESS: I can't answer without</p> <p>6 talking about what I talked about with our attorney.</p> <p>7 MR. JABE: Can we go off the record</p> <p>8 for a minute?</p> <p>9 (Off the record at 1:40 p.m.)</p> <p>10 (Back on the record at 1:43 p.m.)</p> <p>11 BY MR. JABE:</p> <p>12 Q Why did Ziebart apply for trademark registration for</p> <p>13 Formula Q in 2014?</p> <p>14 MR. BRADENBURG: I instruct the</p> <p>15 witness, if she can answer that without reference to</p> <p>16 attorney/client communication, you may answer.</p> <p>17 Otherwise, I'd instruct you not to answer.</p> <p>18 THE WITNESS: It was something our</p> <p>19 attorney --</p> <p>20 MR. BRADENBURG: If it's a</p> <p>21 communication with counsel, I'd instruct you not to</p> <p>22 answer.</p> <p>23 THE WITNESS: Oh, I'm sorry.</p> <p>24 MR. BRADENBURG: So I'm instructing</p> <p>25 her not to answer.</p>

ZIEBART INTERNATIONAL -vs- Z TECHNOLOGIES
Patricia Libsky

Job 2807
Pages 30..33

<p style="text-align: right;">Page 30</p> <p>1 BY MR. JABE:</p> <p>2 Q Do you know who made the decision to apply for</p> <p>3 trademark registration at Ziebart?</p> <p>4 MR. BRADENBURG: If that was part of a</p> <p>5 communication with counsel in anticipation of</p> <p>6 litigation, I would instruct the witness not to</p> <p>7 answer. If it's done for another reason not</p> <p>8 involving counsel, you may answer.</p> <p>9 BY MR. JABE:</p> <p>10 Q So the question is: Who at Ziebart made the</p> <p>11 decision to seek trademark registration for Formula</p> <p>12 Q?</p> <p>13 A It was between our -- our attorney, both of us. Our</p> <p>14 attorney and us.</p> <p>15 Q Would you be the person at Ziebart who was making</p> <p>16 that decision?</p> <p>17 MR. BRADENBURG: Objection. She just</p> <p>18 said it was involving counsel.</p> <p>19 MR. JABE: I'm not asking about</p> <p>20 counsel. I'm not asking about that part of it. I'm</p> <p>21 asking who the Ziebart person is that is directing</p> <p>22 counsel.</p> <p>23 MR. BRADENBURG: Are you saying who</p> <p>24 was involved in the decision? You can find out</p> <p>25 names. You can't find out substance. You're asking</p>	<p style="text-align: right;">Page 31</p> <p>1 who made the decision.</p> <p>2 MR. JABE: Who made it?</p> <p>3 MR. BRADENBURG: And a decision was</p> <p>4 made in conjunction with counsel, that involves</p> <p>5 communications. You can ask if she was involved in</p> <p>6 the process, if she was involved in discussions with</p> <p>7 counsel regarding that subject matter.</p> <p>8 You know, and -- but you can't go into</p> <p>9 what the substance was.</p> <p>10 MR. JABE: I'm not going into the</p> <p>11 substance.</p> <p>12 MR. BRADENBURG: Yes, you are. You're</p> <p>13 saying who made a decision? That's substantive.</p> <p>14 The decision is substantive.</p> <p>15 MR. JABE: The privilege doesn't</p> <p>16 protect that. The question is: Who made the</p> <p>17 decision to seek trademark registration; was it Ms.</p> <p>18 Lipsky, was it Tom Wolfe, who did that?</p> <p>19 MR. HOOKER: The issue is that's a</p> <p>20 legal decision to seek --</p> <p>21 MR. JABE: I'm not asking about the</p> <p>22 legal connection. I'm just asking who within the</p> <p>23 company --</p> <p>24 MR. HOOKER: The decision itself</p> <p>25 involves legal expertise.</p>
<p style="text-align: right;">Page 32</p> <p>1 MR. JABE: I'm not asking about it.</p> <p>2 I'm asking who --</p> <p>3 MR. BRADENBURG: But she's already</p> <p>4 told you it was a joint decision between counsel and</p> <p>5 her. So you can't go into what decisions, what</p> <p>6 occurred within that purview.</p> <p>7 MR. JABE: Counsel provide advice.</p> <p>8 They don't make decisions. Clients make decisions.</p> <p>9 And I'm asking who at the client made the decision.</p> <p>10 It's not a privileged communication. I'm not</p> <p>11 asking --</p> <p>12 MR. BRADENBURG: You're assuming that</p> <p>13 attorneys don't make decisions. I know in many</p> <p>14 cases that client -- attorneys do make decisions.</p> <p>15 And in this case, she said attorneys were involved</p> <p>16 in, you know, the decision-making process. So I'm</p> <p>17 trying not to get you into what discussions were</p> <p>18 had.</p> <p>19 MR. HOOKER: Your answer assumes that</p> <p>20 in-house counsel at a client did not make the</p> <p>21 decision. They're still part of the client.</p> <p>22 They're still attorneys as well.</p> <p>23 MR. JABE: I still don't think that's</p> <p>24 privilege.</p> <p>25 MR. BRADENBURG: I obviously know you</p>	<p style="text-align: right;">Page 33</p> <p>1 don't think it. But I am very hesitant to let her</p> <p>2 testify on communications with counsel.</p> <p>3 MR. JABE: Okay.</p> <p>4 MR. BRADENBURG: Now you've seen what</p> <p>5 was filed. You can ask her things like "Did you</p> <p>6 sign the application?" I don't know if she did or</p> <p>7 not. You know, factual-based, things like that.</p> <p>8 But -- you can ask if the application was filed.</p> <p>9 That's factual. But you can't ask why or who</p> <p>10 decided if it was, you know, work product-related.</p> <p>11 BY MR. JABE:</p> <p>12 Q Did anyone at Ziebart tell Z Tech that it was</p> <p>13 applying for trademark registration for Formula Q?</p> <p>14 A A notice goes out from the Trademark Office, but</p> <p>15 ourselves, I don't believe we did.</p> <p>16 Q Did anybody write a letter?</p> <p>17 A I don't think so, no.</p> <p>18 Q Are you aware of anybody making a phone call?</p> <p>19 A I don't know that. I don't know if anyone did.</p> <p>20 Q But you didn't?</p> <p>21 A I didn't.</p> <p>22 Q And you were not aware at the time that Z Tech had</p> <p>23 been using the name for 20 years?</p> <p>24 MR. BRADENBURG: Objection. I</p> <p>25 instruct the witness not to answer to the extent it</p>

ZIEBART INTERNATIONAL -vs- Z TECHNOLOGIES
Patricia Libsky

Job 2807
Pages 34..37

<p style="text-align: right;">Page 34</p> <p>1 involves communications with counsel. If you can 2 answer not based upon communications involving 3 counsel, you may do so. 4 THE WITNESS: Can you repeat the 5 question. 6 MR. JABE: Can you read it back. 7 (The indicated portion of the record 8 was read back as follows: 9 "Q And you were not aware at the 10 time that Z Tech had been using the name for 20 11 years?") 12 MR. BRADENBURG: Why don't you clarify 13 what time you're referring to "At the time." 14 BY MR. JABE: 15 Q When the trademark registration application was 16 filed in 2014, were you aware that Z Tech had been 17 using the name for 20 years? 18 MR. BRADENBURG: I will instruct the 19 witness not to answer to the extent it involves 20 communications with counsel. If you can answer 21 without reference to communications with counsel, 22 you may do so. 23 THE WITNESS: No. 24 BY MR. JABE: 25 Q Let me show you an Exhibit.</p>	<p style="text-align: right;">Page 35</p> <p>1 (Deposition Exhibit No. 13 was marked 2 for identification.) 3 MR. BRADENBURG: This is 13? 4 THE COURT REPORTER: Yes. 5 BY MR. JABE: 6 Q This document is Bates stamped ZIE 272 to ZIE 274. 7 And lawyers refer to Bates stamping as the serial 8 numbers at the bottom corners, pages. 9 Did I read that correctly, 272 through 10 274? 11 A Yes. 12 Q This document has your signature on it, correct? 13 A Yes. 14 Q And this is a letter you sent to Ellis Breskman of Z 15 Tech on May 19th of 2011, correct? 16 A Yes. 17 Q What caused you to write this letter? 18 A I believe this is when Mike Pino brought to my 19 attention that our names were being used on -- on 20 the website home page of Z Technologies. 21 Q And you say that Z Tech is infringing Ziebart's 22 trademarks by using the names Z Shield and Z Guard, 23 correct? 24 A Correct. 25 Q And here, Z Shield is spelled Z, space, S-H-I-E-L-D?</p>
<p style="text-align: right;">Page 36</p> <p>1 A Correct. 2 Q And it's spelled that way at this time by Z Tech and 3 Ziebart? 4 A We have the dash. 5 Q You have a dash between the Z and the S? 6 A Right. 7 Q And Z Tech is using the name Z Guard, capital Z, 8 capital G-U-A-R-D with a space between the Z and G, 9 correct? 10 A Correct. 11 Q And Ziebart's version is capital Z-E-E-G-A-R-D, 12 right? 13 A Correct. 14 Q And you say that Z Tech is infringing Ziebart's 15 trademarks by using the name Z Shield and Z Guard, 16 right? 17 A Right. 18 Q And you say in your letter that Ziebart owns those 19 names, correct? 20 A Right. Yep. 21 Q What was the basis for the allegation that Z Tech 22 was infringing the trademarks of Ziebart? 23 A What was the basis? It was they had 24 their -- they're the same name. They're the same 25 sounding name. They're just spelled slightly</p>	<p style="text-align: right;">Page 37</p> <p>1 differently. 2 Q Before you sent the letter, did you make any 3 inquiries as to whether Z Tech had the right to use 4 those names? 5 A I might have looked on the trademark -- the U.S. 6 Trademark Office website to see if they had a 7 registered trademark for them. 8 Q Did you ask anybody at Ziebart whether they knew if 9 Z Tech had been using those names before? 10 A No. 11 Q Do you have any awareness of whether they had been 12 using those names for many years prior to you 13 signing the letter? 14 A No. 15 Q You also reference a 2009 opinion by the Trademark 16 Trial and Appeal Board on the letter, it's on the 17 first page; is that right? 18 A Yes. 19 Q Why did you quote that opinion? 20 A I believe that decision had just -- maybe not. I 21 thought maybe it had just come down. I think I was 22 trying to show that -- that they were saying that 23 the Z Shield name was ours, Z-Liner name was ours, 24 that there was something unique about the fact that 25 -- that we used -- the way -- the way we spelled it;</p>

ZIEBART INTERNATIONAL -vs- Z TECHNOLOGIES
Patricia Libsky

Job 2807
Pages 38..41

<p style="text-align: right;">Page 38</p> <p>1 and that they were close to violating that.</p> <p>2 Q And this opinion, as I understand this paragraph, is</p> <p>3 essentially concluding that the name Z Tech used by</p> <p>4 another party, is violating Ziebart's trademark</p> <p>5 rights; is that understanding correct?</p> <p>6 A Yes.</p> <p>7 Q That's how you understood it?</p> <p>8 A Yes.</p> <p>9 Q And it appears from this portion quoted that Ziebart</p> <p>10 was taking a position in that dispute that the name</p> <p>11 Z Tech used by someone else violated Ziebart's</p> <p>12 trademarks; is that your understanding?</p> <p>13 A Yes.</p> <p>14 Q To your knowledge, has Ziebart ever claimed that my</p> <p>15 client, Z Tech, cannot use the name Z Tech?</p> <p>16 MR. JABE: Objection to the extent it</p> <p>17 requires discussions with counsel. If it doesn't</p> <p>18 involve discussions with counsel, you may answer.</p> <p>19 THE WITNESS: Can you say that one</p> <p>20 more time.</p> <p>21 MR. JABE: Can you read the question</p> <p>22 back, please.</p> <p>23 (The indicated portion of the record</p> <p>24 was read back as follows:</p> <p>25 "Q To your knowledge, has Ziebart</p>	<p style="text-align: right;">Page 39</p> <p>1 ever claimed that my client, Z Tech, cannot use the</p> <p>2 name Z Tech?")</p> <p>3 THE WITNESS: No.</p> <p>4 BY MR. JABE:</p> <p>5 Q Did Ziebart tell the Trademark Trial and Appeal</p> <p>6 Board that my client Z Tech has been using that name</p> <p>7 since 1996 without objection from Ziebart?</p> <p>8 MR. BRADENBURG: What date was that?</p> <p>9 MR. JABE: 1996.</p> <p>10 THE WITNESS: I'm sorry, can you</p> <p>11 repeat the question?</p> <p>12 BY MR. JABE:</p> <p>13 Q Did Ziebart tell the Trademark Trial and Appeal</p> <p>14 Board that my client, Z Tech, has been using the</p> <p>15 name Z Tech since 1996 without objection from</p> <p>16 Ziebart?</p> <p>17 A I don't know.</p> <p>18 Q Why would Ziebart have the right to control a third</p> <p>19 party's use of my client's name?</p> <p>20 MR. BRADENBURG: Excuse me, can you</p> <p>21 repeat that?</p> <p>22 (The indicated portion of the record</p> <p>23 was read back as follows:</p> <p>24 "Q Why would Ziebart have the right</p> <p>25 to control a third party's use of my client's</p>
<p style="text-align: right;">Page 40</p> <p>1 name?")</p> <p>2 MR. BRADENBURG: Same objection. If</p> <p>3 it involves communications with counsel, you're not</p> <p>4 to answer. If you can answer it otherwise, you may</p> <p>5 do so.</p> <p>6 THE WITNESS: I'm sorry, can you</p> <p>7 repeat that question one more time?</p> <p>8 (The indicated portion of the record</p> <p>9 was read back as follows:</p> <p>10 "Q Why would Ziebart have the right</p> <p>11 to control a third party's use of my client's</p> <p>12 name?")</p> <p>13 MR. BRADENBURG: I object. You're</p> <p>14 asking for a legal conclusion.</p> <p>15 MR. JABE: I appreciate the objection.</p> <p>16 THE WITNESS: I don't know.</p> <p>17 BY MR. JABE:</p> <p>18 Q Do you believe that my client is not allowed to use</p> <p>19 the name Z Tech?</p> <p>20 MR. BRADENBURG: Mr. Jabe, this is far</p> <p>21 afield from any issue here. It has no relevance.</p> <p>22 We've been going on about use by Z Tech, which is</p> <p>23 not an issue in this litigation. If there's some</p> <p>24 relationship -- but you're asking her for legal</p> <p>25 conclusions, and she's a non-attorney, and you know,</p>	<p style="text-align: right;">Page 41</p> <p>1 I don't see what relevance this has to it. And I'm</p> <p>2 inclined to ask a court to restrict the issues to</p> <p>3 this case, because I don't want legal admissions</p> <p>4 being made by a non-attorney on behalf of Ziebart.</p> <p>5 But if -- I just don't understand</p> <p>6 where we're going with this, is my bottom line.</p> <p>7 MR. JABE: It's in the letter and I'm</p> <p>8 trying to understand why, and --</p> <p>9 MR. BRADENBURG: Yes, but that letter</p> <p>10 doesn't relate to this lawsuit.</p> <p>11 MR. JABE: Well, sure it does.</p> <p>12 MR. BRADENBURG: No, it doesn't.</p> <p>13 MR. JABE: Yes, it does.</p> <p>14 MR. BRADENBURG: Are you saying we're</p> <p>15 preventing you from using Z Tech in this lawsuit?</p> <p>16 MR. JABE: This is a letter --</p> <p>17 MR. BRADENBURG: Yes.</p> <p>18 MR. JABE: -- that leads up to the</p> <p>19 2012 settlement agreement which is an issue in the</p> <p>20 case.</p> <p>21 MR. BRADENBURG: Then ask about the</p> <p>22 letter. Yes, but not as to whether we can sue you</p> <p>23 on Z Tech, which is not an issue to this case, and</p> <p>24 is not a subject matter of this letter or any other</p> <p>25 letter or document in this litigation.</p>

ZIEBART INTERNATIONAL -vs- Z TECHNOLOGIES
Patricia Libsky

Job 2807
Pages 42..45

<p style="text-align: right;">Page 42</p> <p>1 I mean, if you ask factual questions, 2 she can try to answer. But asking her legal 3 opinions on something that's not relevant to this 4 litigation is very worrisome to me as an attorney. 5 MR. JABE: I have another Exhibit for 6 you, that is 14. 7 (Deposition Exhibit No. 14 was marked 8 for identification.) 9 BY MR. JABE: 10 Q So you've been handed Z Tech's Exhibit Number 14. 11 This document is Bates stamped ZIE 994 to ZIE 997; 12 is that right? 13 A Yes. 14 Q And this document has your signature on it; is that 15 right? 16 A Yes. 17 Q And this is a letter that you sent to Ellis Breskman 18 of Z Tech on July 7th, 2011; is that right? 19 A Yes. 20 Q And what caused you to write this letter? 21 MR. BRADENBURG: Let me interject here 22 that if you can answer that without referring to 23 advice from counsel, you may do so. Otherwise, I 24 will instruct you you're not to answer. 25 THE WITNESS: (Reviewing.) I -- I</p>	<p style="text-align: right;">Page 43</p> <p>1 don't know. I don't remember. 2 BY MR. JABE: 3 Q In the letter, you identify specific alleged 4 trademark violations on Z Tech's website to which 5 Ziebart is objecting; is that correct? 6 A Yes. 7 Q The alleged trademark violations occur in several 8 places on the website; is that right? 9 A Yes. 10 Q And you quote those portions of the website, 11 correct? 12 A Yes. 13 Q And you were quoting those to show Z Tech where the 14 problems on the website were, right? 15 A Right. 16 Q Did you ever tell Z Tech about any other specific 17 portions of Z Tech's website to which Ziebart 18 objected? 19 A Did I ever or at this -- 20 Q Ever? 21 A No. 22 MR. JABE: I'm handing you Z Tech's 23 Exhibit 15. 24 (Deposition Exhibit No. 15 was marked 25 for identification.)</p>
<p style="text-align: right;">Page 44</p> <p>1 BY MR. JABE: 2 Q And this document is Bates stamped ZIE 280 to ZIE 3 282; is that right? 4 A Yes. 5 Q Have you seen this document before? 6 A Yes. 7 Q And it's a 2012 settlement agreement between Ziebart 8 and Z Tech, correct? 9 A Yes. 10 Q Okay. And this relates to the dispute that was 11 subject of your letters of May 19th and July 7th, 12 right? 13 A Yes. 14 Q In the middle of the page, five paragraphs down, it 15 says that Z Technologies is the owner of the mark Z 16 Shield in certain context; is that correct? 17 A Correct. 18 Q And then it says in the next paragraph, Z 19 Technologies is the owner of Z Guard, the mark Z 20 Guard in certain context also; is that correct? 21 A Correct. 22 Q Now, in your May 19th, 2011 letter, you said that 23 Ziebart owned those names and that Z Tech was 24 infringing by using them; is that correct? 25 A Yes.</p>	<p style="text-align: right;">Page 45</p> <p>1 Q And in the letter you didn't acknowledge that Z Tech 2 had any right to the names; is that right? 3 A I didn't say that. I just -- I said they were 4 infringing on ours. I didn't say they -- I 5 guess -- I guess -- I don't know if that infers they 6 didn't have a right. I was just saying they were 7 infringing on ours. 8 Q Was your letter on May 19th, 2011 mistaken? 9 MR. BRADENBURG: Objection. That's 10 getting into all kinds of legal questions. 11 You're -- the way you've done it is 12 there's a legal document that you know was 13 negotiated by counsel, and now you're using that to 14 suggest -- go back in time. You know, you're 15 impacting all kinds of attorney communications that 16 occurred during that time period. And I would 17 instruct her not to answer. There's just no way 18 that can be answered without impacting 19 attorney/client communications. 20 BY MR. JABE: 21 Q Section 5 of the settlement agreement on page ZIE 22 281, states that Z Tech will remove the name 23 Ziebart, Z Guard and Z Shield from its website 24 within 30 days; is that right? 25 A Yes.</p>

ZIEBART INTERNATIONAL -vs- Z TECHNOLOGIES
Patricia Libsky

Job 2807
Pages 46..49

<p style="text-align: right;">Page 46</p> <p>1 Q Now, in this lawsuit, Ziebart is claiming that Z 2 Tech has breached this agreement by using Ziebart's 3 name in meta tags on Ziebart's website; is that 4 right? 5 A Yes. 6 Q Ziebart is claiming that Z Tech should have removed 7 Ziebart's name from the meta tags on the website; is 8 that right? 9 A Yes. 10 Q What is meta tag? 11 A I don't know. I didn't draft the lawsuit. Our 12 attorneys drafted it. 13 Q So you don't know what a meta tag is? 14 A I know it's something that identifies you on the 15 website. 16 Q You never told Z Tech in your 2011 letters that 17 Ziebart objected to Z Tech's use of meta tags; is 18 that right? 19 A Correct. 20 Q Why not? 21 A I didn't know what they were. I never -- I -- I 22 didn't know what they were. That wasn't until 23 counsel drafted the Complaint. 24 MR. BRADENBURG: You don't want to go 25 into discussions with counsel. So the answer is</p>	<p style="text-align: right;">Page 47</p> <p>1 what happened at the time you wrote the letter. 2 BY MR. JABE: 3 Q Yeah, just stick to that. 4 A I didn't know what they were. 5 Q You didn't know that they were there? 6 A Right. 7 Q If Z Tech thought that the parts of the website it 8 was supposed to change were the parts you mentioned 9 specifically in your letters, wouldn't that be 10 reasonable of Z Tech? 11 MR. BRADENBURG: Objection. You're 12 asking what someone else thought. 13 MR. JABE: Bob -- 14 MR. BRADENBURG: You're asking her -- 15 MR. JABE: I understand, but it's a 16 speaking objection. You can object and I note your 17 objection. 18 MR. BRADENBURG: That's what I said, 19 then you started talking to me, so I started talking 20 back. All I said was, it's asking what someone 21 else -- 22 MR. JABE: I didn't start talking back 23 to you. I asked a question and you started 24 providing a -- 25 MR. BRADENBURG: I think your record</p>
<p style="text-align: right;">Page 48</p> <p>1 would indicate you started talking to me, but be 2 that as it may. 3 BY MR. JABE: 4 Q Let me restate the question. 5 If Z Tech thought the parts of its 6 website it was supposed to change were the parts you 7 specifically mentioned in your letters, wouldn't 8 that be reasonable of Z Tech? 9 A I don't know. 10 Q Why don't you know? 11 A I don't know what they know about computers and 12 how -- who their computer person is and what he 13 would have removed. I don't know if -- 14 Q I'd like to understand why the meta tags were 15 discovered prior to this case, but not in 2011 when 16 you were writing the letters. Can you explain that? 17 MR. BRADENBURG: I think it's been 18 asked and answered, but you may answer. 19 BY MR. JABE: 20 Q I understand that in 2011 you didn't know what meta 21 tags were; is that right? 22 A (Shook head in an affirmative manner.) 23 Q You didn't think to look for them; is that right? 24 A Yes. 25 Q What was different in 2014 or 2015, I should say?</p>	<p style="text-align: right;">Page 49</p> <p>1 What was different? 2 MR. BRADENBURG: There's all kinds of 3 assumptions in that. 4 BY MR. JABE: 5 Q How was it discovered in 2015? 6 MR. BRADENBURG: If you can answer 7 that without discussions with counsel, you may do 8 so. If your knowledge of how it was discovered 9 relies upon communications with counsel, I'd 10 instruct you not to answer. 11 BY MR. JABE: 12 Q Did you have assistance of counsel in checking the 13 website? Who -- who did that? Who checked the 14 website in 2015 to make that determination of what 15 terms were there? 16 MR. BRADENBURG: If you can answer 17 that based upon your own knowledge, you may do so. 18 If it involves communications with counsel, I'd 19 instruct you not to answer. 20 THE WITNESS: I can't answer without 21 counsel -- 22 BY MR. JABE: 23 Q You can't tell me how it was discovered? 24 MR. BRADENBURG: I'd instruct her not 25 to answer. She just said it was based on</p>

ZIEBART INTERNATIONAL -vs- Z TECHNOLOGIES
Patricia Libsky

Job 2807
Pages 50..53

<p style="text-align: right;">Page 50</p> <p>1 communications with counsel.</p> <p>2 MR. JABE: Okay.</p> <p>3 MR. BRADENBURG: Let me interject</p> <p>4 here. We're in phase one, which is a very limited</p> <p>5 area of discovery, that is discovery related to</p> <p>6 contract interpretation, agreements from the 1996</p> <p>7 and 2001 litigation settlement, and pleadings in the</p> <p>8 2001 litigation and discovery related to when the</p> <p>9 parties knew or should have known of the asserted</p> <p>10 claims. I'm not sure how your discovery is related</p> <p>11 to those topics.</p> <p>12 MR. JABE: It is.</p> <p>13 MR. BRADENBURG: Okay.</p> <p>14 MR. JABE: Plus I'm almost finished,</p> <p>15 but --</p> <p>16 MR. BRADENBURG: I've been giving you</p> <p>17 some latitude, but I don't see it. But if you're</p> <p>18 almost finished, we'll carry through.</p> <p>19 BY MR. JABE:</p> <p>20 Q Well, I would like to understand how or why the meta</p> <p>21 tags were discovered in 2015 but not before. I</p> <p>22 understand part of that, I think, which is that you</p> <p>23 weren't aware of them and didn't know what they were</p> <p>24 in 2011. Is that part correct?</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 51</p> <p>1 Q And then in 2015, others may have been involved,</p> <p>2 counsel and others, it was discovered; is that</p> <p>3 correct? It wasn't just you in 2015?</p> <p>4 MR. BRADENBURG: You're asking a</p> <p>5 factual question, it was discovered in 2014?</p> <p>6 MR. JABE: '14. Okay.</p> <p>7 MR. BRADENBURG: So that's a "yes" or</p> <p>8 "no" answer.</p> <p>9 BY MR. JABE:</p> <p>10 Q I'm sorry, I don't know if I covered that.</p> <p>11 When was the use of the meta tags</p> <p>12 discovered? Because I thought it was 2015, because</p> <p>13 that's the first time Mr. Brandenburg mentioned it</p> <p>14 to me. So if it was before that, I'm interested to</p> <p>15 know that. When was that?</p> <p>16 MR. BRADENBURG: Hold on. There's</p> <p>17 attorneys all over at that point, so I'm trying to</p> <p>18 figure out where we are.</p> <p>19 What's the question right now?</p> <p>20 BY MR. JABE:</p> <p>21 Q The question is: When did Ziebart discover that the</p> <p>22 word "Ziebart" was in meta tags on Z Tech's website?</p> <p>23 MR. BRADENBURG: I'm going to instruct</p> <p>24 her not to answer to the extent it involves</p> <p>25 communications with counsel.</p>
<p style="text-align: right;">Page 52</p> <p>1 If you want to ask her when she found</p> <p>2 out, that's a different question.</p> <p>3 BY MR. JABE:</p> <p>4 Q When did you find out?</p> <p>5 A I don't know if it was 2014 or 2015. Some time</p> <p>6 between 2014 and 2015.</p> <p>7 Q You didn't personally discover it --</p> <p>8 A Correct.</p> <p>9 Q -- by searching on the website?</p> <p>10 A Correct.</p> <p>11 Q You had assistance of some kind?</p> <p>12 A Correct.</p> <p>13 Q Why did you have assistance then, but not in 2011?</p> <p>14 A Well, we did in 2011. We had attorneys involved.</p> <p>15 Q So --</p> <p>16 A Maybe not initially when I sent the first letter,</p> <p>17 but shortly thereafter.</p> <p>18 Q So even though you had the assistance of attorneys</p> <p>19 involved in 2011, the meta tags were not discovered?</p> <p>20 MR. BRADENBURG: Hold on. You can ask</p> <p>21 her what her knowledge is. You're asking more</p> <p>22 generally when things occurred or how they occurred,</p> <p>23 and there were attorneys all over in that time. And</p> <p>24 so I'm trying to let you get the information you're</p> <p>25 entitled to, but I think you're asking, based on my</p>	<p style="text-align: right;">Page 53</p> <p>1 knowing of the situation, things she got from</p> <p>2 counsel. Can you sharpen that a little bit or -- to</p> <p>3 the extent you can answer that without referring to</p> <p>4 counsel as -- you can answer that, but if it</p> <p>5 involves the involvement of counsel, I'd instruct</p> <p>6 you not to answer.</p> <p>7 THE WITNESS: Can you repeat the</p> <p>8 question?</p> <p>9 MR. JABE: Sure. What was the last</p> <p>10 question pending?</p> <p>11 (The indicated portion of the record</p> <p>12 was read back as follows:</p> <p>13 "Q So even though you had the</p> <p>14 assistance of attorneys involved in 2011, the meta</p> <p>15 tags were not discovered?")</p> <p>16 MR. BRADENBURG: And that's assuming</p> <p>17 some facts in (sic) evidence.</p> <p>18 MR. JABE: All of these are speaking</p> <p>19 objections, you're aware of that.</p> <p>20 MR. BRADENBURG: No, it's assuming --</p> <p>21 you're assuming they weren't discovered at that</p> <p>22 time.</p> <p>23 MR. JABE: The word is "objection."</p> <p>24 MR. BRADENBURG: Yes.</p> <p>25 MR. JABE: And then you say "As to</p>

ZIEBART INTERNATIONAL -vs- Z TECHNOLOGIES
Patricia Libsky

Job 2807
Pages 54..57

<p style="text-align: right;">Page 54</p> <p>1 form."</p> <p>2 MR. BRADENBURG: Well, there's a</p> <p>3 predication. You're asking why they weren't</p> <p>4 discovered there.</p> <p>5 MR. JABE: I appreciate --</p> <p>6 MR. BRADENBURG: The question is were</p> <p>7 they discovered at that time or not; and then you</p> <p>8 can ask why they weren't.</p> <p>9 MR. JABE: I think I tried that and it</p> <p>10 got derailed --</p> <p>11 MR. BRADENBURG: I think it --</p> <p>12 MR. JABE: -- by a bunch of other</p> <p>13 objections.</p> <p>14 MR. BRADENBURG: Yeah, and I think it</p> <p>15 will get derailed this time too, but you're making</p> <p>16 an assumption that has no predicate.</p> <p>17 MR. JABE: Let's take a break for a</p> <p>18 minute.</p> <p>19 (Off the record at 2:19 p.m.)</p> <p>20 (Back on the record at 2:32 p.m.)</p> <p>21 MR. JABE: So, for the record, I do</p> <p>22 not agree with Mr. Brandenburg's invocation of the</p> <p>23 privilege in all of the circumstances where he has</p> <p>24 done so. But I think we can take that up at another</p> <p>25 time if necessary. I understand he's instructed the</p>	<p style="text-align: right;">Page 55</p> <p>1 witness not to answer a number of questions because</p> <p>2 of privilege concerns, which I appreciate, and</p> <p>3 there's nothing I can actually do about that under</p> <p>4 these circumstances.</p> <p>5 So I will move on and I have only a</p> <p>6 few questions remaining relating to the things we</p> <p>7 were just discussing, and hopefully framed in a way</p> <p>8 that doesn't come even close to implicating</p> <p>9 privilege issues.</p> <p>10 BY MR. JABE:</p> <p>11 Q In 2011, did anyone make an effort to determine</p> <p>12 whether Z Tech was using Ziebart's name and meta</p> <p>13 tags?</p> <p>14 MR. BRADENBURG: To the extent you can</p> <p>15 answer that question based upon information not</p> <p>16 provided by counsel, you may do so. Otherwise I'm</p> <p>17 instructing you not to answer.</p> <p>18 THE WITNESS: I don't know.</p> <p>19 BY MR. JABE:</p> <p>20 Q In 2014, Ziebart did make an effort to determine</p> <p>21 whether Z Tech was using Ziebart's name in meta</p> <p>22 tags, right?</p> <p>23 MR. BRADENBURG: Again, to the extent</p> <p>24 you can answer that question based upon your</p> <p>25 knowledge, you may do so. To the extent it is based</p>
<p style="text-align: right;">Page 56</p> <p>1 upon communications with counsel, I'd instruct you</p> <p>2 not to answer.</p> <p>3 THE WITNESS: It's based on</p> <p>4 discussions with counsel. I can't answer.</p> <p>5 MR. BRADENBURG: I'd instruct her not</p> <p>6 to answer.</p> <p>7 MR. JABE: I have no further</p> <p>8 questions.</p> <p>9 MR. BRADENBURG: I have no questions.</p> <p>10 MR. HOOKER: I have no questions.</p> <p>11 (The deposition of Patricia Libsky</p> <p>12 concluded at or about the hour of 2:34 p.m.)</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 57</p> <p>1 CERTIFICATE OF NOTARY</p> <p>2 STATE OF MICHIGAN)</p> <p>3) SS</p> <p>4 COUNTY OF GENESEE)</p> <p>5 I, Quentina Rochelle Snowden, a Notary</p> <p>6 Public in and for the above county and state, do</p> <p>7 hereby certify that the above deposition was</p> <p>8 taken before me at the time and place</p> <p>9 hereinbefore set forth; that the witness was by</p> <p>10 me first duly sworn to testify to the truth, and</p> <p>11 nothing but the truth; that the foregoing</p> <p>12 questions asked and answers made by the witness</p> <p>13 were duly recorded by me stenographically and</p> <p>14 reduced to computer transcription; that this is a</p> <p>15 true, full and correct transcript of my</p> <p>16 stenographic notes so taken; and that I am not</p> <p>17 related to, nor of counsel to either party nor</p> <p>18 interested in the event of this cause.</p> <p>19 Dated: May 31, 2016</p> <p>20</p> <p>21 <u>Quentina Snowden</u></p> <p>22 Quentina Rochelle Snowden</p> <p>23 CSR-5519, Notary Public</p> <p>24 Genesee County, Michigan</p> <p>25 My Commission expires: 1-04-18</p>

ZIEBART INTERNATIONAL -vs- Z TECHNOLOGIES
Patricia Libsky

Job 2807
Index: 13..Bates

1	3	Appeal 37:16 39:5,13
13 35:1,3	30 12:20 45:24	appears 38:9
14 42:6,7,10 51:6		application 33:6,8 34:15
15 43:23,24	5	apply 29:12 30:2
1990s 24:18	5 16:7 45:21	applying 33:13
1996 39:7,9,15 50:6	50 12:17,18,19	approximate 6:15
1998 6:13		area 50:5
19th 35:15 44:11,22 45:8	7	Asphalt 20:23
1:00 5:3	7th 42:18 44:11	asserted 50:9
1:21 16:10,11		assistance 49:12 52:11,13,18 53:14
1:40 29:9	9	assistant 6:8,9
1:43 29:10	994 42:11	assume 15:18
	997 42:11	assumes 32:19
2		assuming 15:16 32:12 53:16,20,21
20 33:23 34:10,17	A	assumption 54:16
2001 50:7,8	Abramson 6:22	assumptions 49:3
2007 6:18 12:17 15:3	academic 6:6	attention 8:20,21 9:16 19:16,18 20:21 35:19
2009 37:15	acknowledge 45:1	attorney 11:16 12:5 14:19 17:18 28:11,21 29:6,19 30:13,14 42:4 45:15
2011 18:7,12 23:18,20 35:15 42:18 44:22 45:8 46:16 48:15,20 50:24 52:13,14,19 53:14 55:11	acquired 24:5 25:5	attorney/client 24:23 25:3 26:7 29:16 45:19
2012 41:19 44:7	addition 27:1	attorneys 7:4,8 8:4 9:4 10:21,22 11:8 15:10 17:4,7,9,16 22:23 26:11,18 27:9 28:25 32:13,14,15,22 46:12 51:17 52:14,18,23 53:14
2014 20:10 21:8 24:1,14 27:15 29:13 34:16 48:25 51:5 52:5,6 55:20	admissions 41:3	avoid 25:23 27:6
2015 48:25 49:5,14 50:21 51:1,3,12 52:5,6	advice 11:7 13:23 14:2,7 32:7 42:23	aware 8:18,23 10:3 27:14 33:18,22 34:9,16 50:23 53:19
2016 5:1	affirmative 48:22	awareness 21:24 37:11
2019 24:8	afield 40:21	
25 5:1	agency 15:10	B
272 35:6,9	agree 54:22	back 14:4,6 16:11 29:10 34:6,8 38:22, 24 39:23 40:9 45:14 47:20,22 53:12 54:20
274 35:6,10	agreement 41:19 44:7 45:21 46:2	barrel 21:11
280 44:2	agreements 50:6	based 34:2 49:17,25 52:25 55:15,24, 25 56:3
281 45:22	allegation 36:21	basis 36:21,23
282 44:3	alleged 43:3,7	Bates 35:6,7 42:11 44:2
2:19 54:19	allegedly 28:14	
2:32 54:20	allowed 40:18	
2:34 56:12	amount 15:7 16:6	
	answers 5:20 25:21	
	anticipation 30:5	

ZIEBART INTERNATIONAL -vs- Z TECHNOLOGIES
Patricia Libsky

Job 2807
Index: began..decided

began 12:10 14:20 16:13,22 17:24 22:8

beginning 7:9

behalf 12:24 15:11 41:4

bit 53:2

Board 37:16 39:6,14

Bob 25:11 47:13

bottom 35:8 41:6

BRADENBURG 10:19 15:15 17:3,17 18:5 22:14,21 24:7,20 25:6,9 26:9,17 27:23 28:6,16 29:2,14,20,24 30:4,17, 23 31:3,12 32:3,12,25 33:4,24 34:12, 18 35:3 39:8,20 40:2,13,20 41:9,12, 14,17,21 42:21 45:9 46:24 47:11,14, 18,25 48:17 49:2,6,16,24 50:3,13,16 51:4,7,16,23 52:20 53:16,20,24 54:2, 6,11,14 55:14,23 56:5,9

Brandenburg 51:13

Brandenburg's 54:22

breached 46:2

break 54:17

Breskman 35:14 42:17

bring 8:20 9:15

brought 19:16,18 20:21 24:19 35:18

building 7:12 8:18

bunch 54:12

business 21:1

C

call 7:20 9:4,17,25 10:1 11:20,22 12:2 13:5 33:18

called 5:5 6:8 18:25

calls 9:9 10:6

capital 6:23 36:7,8,11

carry 50:18

case 26:11 32:15 41:3,20,23 48:15

cases 32:14

caused 35:17 42:20

cautious 26:6

cease 10:14 11:10,15 12:3,7,10,22 13:2,12,15 14:13 19:4

certificate 6:7,8

change 47:8 48:6

checked 49:13

checking 49:12

circumstances 13:15,19,25 14:10, 12 21:2 54:23 55:4

claimed 38:14 39:1

claiming 12:12,22 14:21 46:1,6

claims 50:10

clarify 34:12

client 16:19 17:2 23:19 32:9,14,20,21 38:15 39:1,6,14 40:18

client's 39:19,25 40:11

Clients 32:8

close 38:1 55:8

coaching 25:20 26:4

collection 15:9,10,14,21 16:1

communication 29:16,21 30:5 32:10

communications 10:20 17:4 25:4 27:24 28:8,17 29:3 31:5 33:2 34:1,2, 20,21 40:3 45:15,19 49:9,18 50:1 51:25 56:1

companies 8:15

company 19:9 23:15 31:23

Complaint 46:23

complies 13:17

comply 14:13

computer 48:12

computers 48:11

concerns 55:2

concluded 56:12

concluding 38:3

conclusion 40:14

conclusions 40:25

conduct 8:10 9:5

confirm 22:17 26:12,18

conjunction 31:4

connection 31:22

considerations 11:9 13:24 14:8

consultation 10:25

consulting 11:16

contact 28:25

contacted 19:13

context 23:1 26:20 44:16,20

continue 27:2,3

contract 50:6

control 39:18,25 40:11

cooperative 12:1

copyright 7:14

corners 35:8

corporation 6:23 16:17 20:1

correct 13:3 35:12,15,23,24 36:1,9, 10,13,19 38:5 43:5,11 44:8,16,17,20, 21,24 46:19 50:24 51:3 52:8,10,12

correctly 35:9

cost 11:12

counsel 8:16 10:10,12,13 12:11,23 13:23 14:2,7 27:25 28:8,18 29:3,21 30:5,8,18,20,22 31:4,7 32:4,7,20 33:2 34:1,3,20,21 38:17,18 40:3 42:23 45:13 46:23,25 49:7,9,12,18,21 50:1 51:2,25 53:2,4,5 55:16 56:1,4

courses 7:17

court 5:17 35:4 41:2

covered 51:10

current 7:2

customer 21:4

cutting 25:13

D

dash 36:4,5

date 39:8

dates 6:15

days 45:24

dealers 23:8,16,25

decide 13:12 14:14

decided 11:13 33:10

ZIEBART INTERNATIONAL -vs- Z TECHNOLOGIES
Patricia Libsky

Job 2807
Index: deciding..guess

deciding 13:24 14:9	draft 46:11	factual 33:9 42:1 51:5
decision 10:24 11:10 14:16,17 30:2, 11,16,24 31:1,3,13,14,17,20,24 32:4, 9,21 37:20	drafted 46:12,23	factual-based 33:7
decision-making 32:16	drums 27:16	fair 13:9
decisions 32:5,8,13,14	duly 5:6	fall 7:15
degrees 6:6	<hr/>	familiar 16:16
department 7:22,25 15:9	E	Federated 6:23
deposition 5:15 35:1 42:7 43:24 56:11	<hr/>	feel 27:4
derailed 54:10,15	earlier 13:1	figure 51:18
desist 10:14 11:11,15 12:3,7,11,22 13:3,12,16 14:13 19:4	easily 11:21	file 7:7,8 13:21,25 14:9,14
details 17:20	edge 26:21	filed 14:21 15:4,6 33:5,8 34:16
determination 9:12,20 49:14	effect 25:10	files 8:8
determine 8:10 9:10 12:6 16:14,22 17:25 19:9 55:11,20	effort 55:11,20	find 30:24,25 52:4
determined 19:6	Ellis 35:14 42:17	finished 50:14,18
difference 15:16,19	employed 19:14,15	form 25:15 26:2 54:1
differently 11:5 18:24 37:1	employee 19:12,13,14	formed 23:21
directing 30:21	end 10:5	formula 20:8,12 21:7,16 24:2,6,15,17 25:5 27:15 28:14 29:13 30:11 33:13
direction 17:18	engaging 11:8	found 11:14 52:1
directly 15:8	entail 7:2	frame 22:22
disclose 17:15	entitled 17:5 52:25	framed 55:7
disclosure 7:5	essentially 38:3	franchise 7:4,5 20:2
discontinue 15:24	estimate 12:14 14:24	franchisee 15:25
discover 10:24 20:15,17 51:21 52:7	eventually 25:4	free 27:5
discoverable 17:19	evidence 53:17	front 25:24
discovered 48:15 49:5,8,23 50:21 51:2,5,12 52:19 53:15,21 54:4,7	exact 15:7 16:6	fully 24:12
discovery 50:5,8,10	EXAMINATION 5:9	<hr/>
discussed 22:17,18 23:5,21	examined 5:8	G
discussing 55:7	Excuse 39:20	<hr/>
discussions 17:5 22:6,10,12 23:3 31:6 32:17 38:17,18 46:25 49:7 56:4	Exhibit 34:25 35:1 42:5,7,10 43:23,24	G-u-a-r-d 18:24 36:8
dispute 23:1,7 38:10 44:10	expertise 31:25	generally 52:22
distinction 11:2 17:11	explain 48:16	give 5:19 14:24
doctrine 26:7	extent 17:4,8 24:22 27:9,23 28:6 33:25 34:19 38:16 51:24 53:3 55:14, 23,25	giving 50:16
document 7:5 35:12 41:25 42:11,14 44:2,5 45:12	<hr/>	Google 19:7
	F	Group 24:17
	<hr/>	Guard 18:11,19,22 35:22 36:7,15 44:19,20 45:23
	facility 20:14	guess 7:16,20 8:22 45:5
	fact 9:10 37:24	
	facts 53:17	

ZIEBART INTERNATIONAL -vs- Z TECHNOLOGIES
Patricia Libsky

Job 2807
Index: handed..lawsuit

H

handed 42:10
handing 43:22
handle 7:4 11:21
happen 7:10
happened 29:1 47:1
happening 21:9
happy 6:2
hard 25:23
head 48:22
heard 21:15,18
hearsay 24:8,9,10
held 6:14,15,18,19
hesitant 33:1
hesitate 6:1
hires 15:10
hold 6:6 10:19 51:16 52:20
home 35:20
HOOVER 26:2 27:8 31:19,24 32:19 56:10
hour 56:12

I

identification 35:2 42:8 43:25
identifies 9:2 46:14
identify 12:6 13:2,10 43:3
identity 10:7
immediately 26:12,19
impacting 45:15,18
implicating 55:8
important 5:18
in-house 32:20
inclined 41:2
include 10:12
independent 17:9
Indiana 20:14,24 21:1,13 27:17

ineffective 11:14
infers 45:5
inform 27:21
information 9:6 18:12,17 19:3 27:7 52:24 55:15
infringement 9:3 12:12,23 13:2,5,8, 10 14:22 15:13,17
infringements 12:6
infringer 9:18
infringer's 9:22
infringing 10:1,15 35:21 36:14,22 44:24 45:4,7
initial 24:21,25 26:14
initially 24:19 52:16
initiate 15:22
innocent 11:25
inquiries 9:5,8 10:9 37:3
instances 20:3,7 22:2 23:4
instruct 28:5,19 29:4,14,17,21 30:6 33:25 34:18 42:24 45:17 49:10,19,24 51:23 53:5 56:1,5
instructed 54:25
instructing 17:14 29:24 55:17
instructions 17:6
interested 51:14
interject 22:14 42:21 50:3
International 20:1
Internet 11:18,19,23,24 13:7
interpretation 50:6
invading 26:6
investigation 8:12 16:21 17:18
investigations 8:10 16:13 17:15,21, 22,24
invocation 54:22
involve 38:18
involved 15:5 17:16 26:11,18 27:9 30:24 31:5,6 32:15 51:1 52:14,19 53:14
involvement 53:5

involves 17:4 31:4,25 34:1,19 40:3 49:18 51:24 53:5
involving 30:8,18 34:2
issue 7:12 18:9 24:1 31:19 40:21,23 41:19,23
issues 7:4,18 23:20 25:20,22,24,25 26:23 27:4 41:2 55:9

J

Jabe 5:10 11:4 14:3,11 15:18,20 16:8, 12 17:14,23 18:8 22:20,25 24:11,13 25:2,7,11 26:9,16,22 27:11,12 28:1, 12,22 29:7,11 30:1,9,19 31:2,10,15,21 32:1,7,23 33:3,11 34:6,14,24 35:5 38:16,21 39:4,9,12 40:15,17,20 41:7, 11,13,16,18 42:5,9 43:2,22 44:1 45:20 47:2,13,15,22 48:3,19 49:4,11,22 50:2,12,14,19 51:6,9,20 52:3 53:9,18, 23,25 54:5,9,12,17,21 55:10,19 56:7
job 19:20
joint 32:4
Jr 20:20
judgment 11:20 12:2
July 27:20 42:18 44:11

K

kind 7:12 8:5,22 52:11
kinds 45:10,15 49:2
knew 23:6 37:8 50:9
knowing 53:1
knowledge 25:10 26:10 38:14,25 49:8,17 52:21 55:25

L

L-i-p-s-k-y 5:14
label 27:16
Lacks 25:10
latitude 25:13 50:17
law 6:22 7:21
lawsuit 13:21,25 14:9,14 23:12 41:10, 15 46:1,11

ZIEBART INTERNATIONAL -vs- Z TECHNOLOGIES
 Patricia Libsky

Job 2807
 Index: lawsuits..personal

lawsuits 14:21 15:1,4	meta 46:3,7,10,13,17 48:14,20 50:20 51:11,22 52:19 53:14 55:12,21	45:9 47:11,16,17 53:23
lawyers 35:7		objections 25:15,24 26:4,24 53:19 54:13
leads 41:18	Michigan 5:2	obtain 6:10
leaning 25:1	middle 44:14	occur 43:7
learn 20:9,11 25:4	Mike 19:12,20 35:18	occurred 32:6 45:16 52:22
learned 18:3 20:4 21:8,9 22:2 24:14	mind 11:9,12 25:13	Office 7:19 33:14 37:6
learning 18:17 19:3	mindful 27:4	Offices 6:22
legal 6:7,8,9 7:3,10,15,25 31:20,22,25 40:14,24 41:3 42:2 45:10,12	minute 16:9 29:8 54:18	opinion 37:15,19 38:2
length 25:19	mistaken 45:8	opinions 42:3
letter 10:5,14 11:11,15 12:8 13:3 19:4 33:16 35:14,17 36:18 37:2,13,16 41:7, 9,16,22,24,25 42:17,20 43:3 44:22 45:1,8 47:1 52:16	moment 26:14	outstanding 15:23
letters 12:3,11,22 13:13,16 14:13 44:11 46:16 47:9 48:7,16	money 15:25 16:2	overview 7:21
License 6:17	monitor 8:4	owe 15:25 16:2
limit 22:22	monitoring 8:14,15,22	owned 44:23
limited 50:4	month 27:19	owner 44:15,19
Lipsky 5:4,12 31:18 56:11	move 55:5	owns 36:18
litigation 6:9 7:14 22:15,16,19 30:6 40:23 41:25 42:4 50:7,8	<hr/> N <hr/>	<hr/> P <hr/>
location 9:11,22	names 8:14 18:18 30:25 35:19,22 36:19 37:4,9,12 44:23 45:2	p.m. 5:3 16:10,11 29:9,10 54:19,20 56:12
looked 37:5	necessarily 13:8	pages 35:8
lot 11:24 12:15 16:1,3	negotiated 45:13	paragraph 38:2 44:18
<hr/> M <hr/>	nod 5:21	paragraphs 44:14
made 30:2,10 31:1,2,4,13,16 32:9 41:4	non-attorney 40:25 41:4	paralegal 6:7
make 9:9,11,17,20 10:6,9,24 11:20,22 12:1 21:6 32:8,13,14,20 37:2 49:14 55:11,20	non-attorneys 10:25	part 7:23 22:15 23:22 27:2 30:4,20 32:21 50:22,24
making 11:10 25:12 26:5 30:15 33:18 54:15	note 47:16	parties 10:10,12 50:9
manager 6:17	notice 33:14	parts 47:7,8 48:5,6
manner 48:22	notify 28:2,5,13	party 38:4
mark 10:2 44:15,19	number 42:10 55:1	party's 39:19,25 40:11
marked 35:1 42:7 43:24	numbers 35:8	past 12:21 23:4 24:21
matter 7:3,10 19:24 31:7 41:24	<hr/> O <hr/>	Patricia 5:4,12 56:11
mentioned 8:16 23:17 24:2 47:8 48:7 51:13	Oakland 6:11	pending 53:10
	object 15:15 24:10,22 25:15 26:2 27:5 40:13 47:16	people 8:17 23:3,8
	objected 43:18 46:17	period 11:12 25:1 45:16
	objecting 25:19 43:5	person 7:24 10:1 11:13,22 13:16 14:12 30:15,21 48:12
	objection 24:7,12,20 25:6,12,16 30:17 33:24 38:16 39:7,15 40:2,15	personal 25:10

ZIEBART INTERNATIONAL -vs- Z TECHNOLOGIES
 Patricia Libsky

Job 2807
 Index: personally..royalties

personally 18:15 20:15 21:17,18 52:7
phase 50:4
phone 9:9,17 11:22 33:18
phrase 22:23
pick 5:20
picture 11:18,23
pictures 13:6
Pino 19:12 35:18
Pino's 19:20
place 21:13
places 6:25 43:8
pleadings 50:7
point 51:17
portion 14:5 34:7 38:9,23 39:22 40:8 53:11
portions 43:10,17
position 6:18,19 7:2 38:10
positions 6:14,16
possibly 13:10
potential 9:17,22
predicate 54:16
predication 54:3
preface 27:10
president 19:22,23,25
preventing 41:15
primarily 20:2
prior 18:12 21:21 22:8 23:12 37:12 48:15
privilege 25:22 26:7,8,22 27:1,4,6 31:15 32:24 54:23 55:2,9
privileged 32:10
privileges 24:23
problem 26:23
problems 43:14
process 31:6 32:16
product 17:19 24:5 25:5 26:7
product-related 33:10

Products 24:17
protect 31:16
protects 8:1
provide 12:14 32:7
provided 55:16
providing 47:24
purchased 24:16
Pure 20:23
purview 7:15 32:6

Q

question 6:3 11:5 14:1 15:16 16:21 24:14,24 25:16 26:3 27:13 28:7,17 30:10 31:16 34:5 38:21 39:11 40:7 47:23 48:4 51:5,19,21 52:2 53:8,10 54:6 55:15,24
questions 5:20,24,25 17:10 27:6,10 42:1 45:10 55:1,6 56:8,9,10
quote 37:19 43:10
quoted 38:9
quoting 43:13

R

read 14:3,6 34:6,8 35:9 38:21,24 39:23 40:9 53:12
reason 30:7
reasonable 47:10 48:8
recall 18:10 19:1 20:3,7 21:3 22:2 27:19
receive 11:7
received 9:7 14:12
record 5:11,21 14:5 16:9,10,11 29:7, 9,10 34:7 38:23 39:22 40:8 47:25 53:11 54:19,20,21
recording 5:17
refer 35:7
reference 28:17 29:15 34:21 37:15
referring 10:20 27:24 28:7 34:13 42:22 53:3
refrain 25:19

registered 37:7
registering 7:5
registration 7:6 29:12 30:3,11 31:17 33:13 34:15
relate 41:10
related 50:5,8,10
relates 44:10
relating 7:17 55:6
relationship 40:24
relevance 40:21 41:1
relevant 42:3
relies 49:9
remaining 55:6
remember 18:22 21:11 43:1
remove 10:4 45:22
removed 46:6 48:13
repeat 14:1 34:4 39:11,21 40:7 53:7
repeatedly 22:19
rephrase 6:2
reported 27:16
Reporter 5:17 35:4
requests 13:17
requires 38:17
respect 24:2 25:13,22,25 27:5
responsibilities 19:20
restate 48:4
restrict 41:2
result 5:19 9:6 17:6
reveal 27:6
revealing 10:6 25:3
Reviewing 42:25
rights 38:5
rough 12:14 14:24
roughly 12:21
royalties 15:23

ZIEBART INTERNATIONAL -vs- Z TECHNOLOGIES
Patricia Libsky

Job 2807
Index: S-h-i-e-l-d..trademarks

S		
S-h-i-e-l-d 35:25 salesman 20:2 searches 19:7 searching 52:9 Section 45:21 seek 30:11 31:17,20 sees 8:17,19 11:17 selling 20:2 seminar 7:20 send 10:5,14,18 11:10,13 12:4 13:2, 12,15,16 sending 12:7 senior 19:22,23,25 serial 35:7 service 8:7 Setting 11:7 settlement 41:19 44:7 45:21 50:7 sharpen 53:2 Shield 18:11,19 19:1 35:22,25 36:15 37:23 44:16 45:23 shook 48:22 shorter 26:1 shortly 52:17 shot 13:6 show 34:25 37:22 43:13 sic 24:9 53:17 sign 16:3 33:6 signature 35:12 42:14 signing 37:13 situation 53:1 slightly 36:25 sounding 36:25 Southfield 5:2 space 18:22 35:25 36:8 speak 5:19	speaking 24:11 25:12,19 26:4 47:16 53:18 specialist 6:9 specific 43:3,16 specifically 47:9 48:7 spell 5:13 18:20 spelled 18:21,22,23,24 19:1 35:25 36:2,25 37:25 stamped 35:6 42:11 44:2 stamping 35:7 start 47:22 started 22:10,11,13 47:19,23 48:1 state 5:11 states 7:6 45:22 step 17:22 steps 8:1 stick 47:3 sticker 21:10 stickers 20:13 subject 19:24 31:7 41:24 44:11 substance 30:25 31:9,11 substantive 31:13,14 sue 15:10 41:22 suggest 45:14 suggesting 18:13 suit 15:21 suits 15:13,14 supposed 47:8 48:6 sworn 5:6	team 22:15 Tech 16:14,23,24 18:3,13 20:4 21:15 22:3,7,12 23:3,7,16,25 24:15,16 25:5 27:14 28:2,5,13,23,25 33:12,22 34:10, 16 35:15,21 36:2,7,14,21 37:3,9 38:3, 11,15 39:1,2,6,14,15 40:19,22 41:15, 23 42:18 43:13,16 44:8,23 45:1,22 46:2,6,16 47:7,10 48:5,8 55:12,21 Tech's 19:17 20:11 42:10 43:4,17,22 46:17 51:22 Technologies 16:17,24 17:2 18:1,21 23:10,13,21 27:21 35:20 44:15,19 Techs 17:1 terminated 15:24 terms 49:15 testified 5:8 13:1 testify 5:6 33:2 testimony 25:9 things 13:9 27:1 33:5,7 52:22 53:1 55:6 Thisdocument 35:6 Thomas 20:20 thought 23:9,16,25 26:24 37:21 47:7, 12 48:5 51:12 time 11:13 18:3 19:14,15,21 21:8 22:8,22 23:20 24:1,21 25:14 26:13 27:22 28:3 33:22 34:10,13 36:2 38:20 40:7 45:14,16 47:1 51:13 52:5,23 53:22 54:7,15,25 times 11:24 16:1,3,4 title 6:17,18 told 23:14,23 28:23 32:4 46:16 Tom 8:20 14:18 31:18 topic 27:13 topics 26:25 50:11 trademark 6:17 7:7,8,14,17,19,21 8:8,24,25 9:1,2,7,11 12:12,23 13:2,5, 8,10 14:21 15:13,17 16:1 18:9,25 29:12 30:3,11 31:17 33:13,14 34:15 37:5,6,7,15 38:4 39:5,13 43:4,7 trademark-related 6:24 trademarks 8:1,7,11,19 10:16 16:15, 23 18:1,4,14 20:5 22:4,8,12 23:4 28:15,24 35:22 36:15,22 38:12
	T	
	tag 46:10,13 tags 46:3,7,17 48:14,21 50:21 51:11, 22 52:19 53:15 55:13,22 taking 38:10 talked 22:22 28:10 29:6 talking 15:13 23:9 24:22 26:25 27:2 28:21 29:6 47:19,22 48:1	

ZIEBART INTERNATIONAL -vs- Z TECHNOLOGIES
Patricia Libsky

Job 2807
Index: Trial..Ziebart's

Trial 37:16 39:5,13

truth 5:7,8

turn 15:9

type 17:22

types 11:8

U

U.S. 37:5

unclear 5:25

uncomfortable 26:15,21

understand 5:22 6:3 7:13 11:2 16:19
17:11 21:6 23:15,24 24:12 26:16 38:2
41:5,8 47:15 48:14,20 50:20,22 54:25

understanding 21:7 24:3,16 38:5,12

understood 24:4 38:7

undertook 17:17

unique 37:24

University 6:11

usage 9:7

V

verbal 5:19

version 36:11

vice 19:22,23,25

videos 13:6

violated 38:11

violating 18:1,13 26:6 28:24 38:1,4

violation 28:15

violations 43:4,7

visit 9:11,22,24

voluntarily 15:24

W

watch 8:7,9

watches 8:7

website 19:18 35:20 37:6 43:4,8,10,
14,17 45:23 46:3,7,15 47:7 48:6
49:13,14 51:22 52:9

Wednesday 5:1

whatsoever 26:23

Wolfe 14:18 20:20 31:18

Wolfe's 8:21

Wolpoff 6:22

word 51:22 53:23

words 10:22

work 6:21,24 7:3,6,7,23 8:4 17:19
26:7 33:10

working 12:10 14:20 16:14,22 17:25
22:8,10,11 23:2

worrisome 42:4

worth 12:7

write 33:16 35:17 42:20

writing 48:16

wrote 47:1

Y

year 12:21 15:1 27:19

years 33:23 34:11,17 37:12

Z

Z-e-e-g-a-r-d 36:11

Z-gard 18:25

Z-liner 37:23

ZIE 35:6 42:11 44:2 45:21

Ziebart 6:15,19,21 7:2,22 8:1,3,10
9:5,9 12:10,11 13:1,24 14:8,20,21
15:6,21,25 16:3,13,21 17:25 18:10,19
19:3,13 20:1,17 21:4 22:7 23:2,13,22
24:6 28:13,23 29:12 30:3,10,15,21
33:12 36:3,18,22 37:8 38:9,14,25
39:5,7,13,16,18,24 40:10 41:4 43:5,17
44:7,23 45:23 46:1,6,17 51:21,22
55:20

Ziebart's 10:15 12:24 18:1,4,14 19:17
20:4 22:3,7 23:3 24:17 28:15 35:21
36:11,14 38:4,11 46:2,3,7 55:12,21